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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1940.

No. 13.

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

ASHBY OLIVER STEWART, *Respondent*.

## APPENDIX TO

## Brief For Respondent.

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## APPENDIX TO

## Brief For Respondent.

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## PROVISIONS OF THE FEDERAL FARM LOAN ACT OF 1916.

C. 245, 39 Stat. 360, mentioned in the course of the brief and not set out under statutes involved.

Sec. 3. That there shall be established at the seat of government in the Department of the Treasury a bureau charged with the execution of this Act and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board.

* * *

It shall be the duty of the Federal Farm Loan Board to prepare from time to time bulletins setting forth the principal features of this Act and through the Department of Agriculture or otherwise to distribute the same, particularly to the press, to agricultural journals, and to farmers' organizations; to prepare and distribute in the same manner circulars setting forth the principles and advantages of amortized farm loans and the protection afforded debtors under this Act, instructing farmers how to organize and conduct farm loan associations, and advising investors of the merits and advantages of farm loan bonds; * * *

Sec. 12. That no Federal land bank organized under this Act shall make loans except upon the following terms and conditions:

* * *

Second. Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual or semiannual installments sufficient to cover, first, a charge on the loan, at a rate not exceeding the interest rate in the last series of farm loan bonds issued by the land bank making the loan; second, a charge for administration and profits at a rate not exceeding one per centum per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage; * * *

Sec. 13. That every Federal land bank shall have power, subject to the limitations and requirements of this Act—

First. To issue, subject to the approval of the Federal Farm Loan Board, and to sell farm loan bonds of the kinds authorized in this Act, to buy the same for its own account, and to retire the same at or before maturity.

* * *

Sec. 16. * * *

Except as otherwise provided, joint stock land banks shall have the powers of, and be subject to all the restric-

tions and conditions imposed on, Federal land banks by this Act, so far as such restrictions and conditions are applicable: *Provided, however,* That the Government of the United States shall not purchase or subscribe for any of the capital stock of any such bank; and each shareholder of any such bank shall have the same voting privileges as holders of shares in national banking associations.

* * *

Joint stock land banks shall in no case charge a rate of interest on farm loans exceeding by more than one per centum the rate of interest established for the last series of farm loan bonds issued by them.

*Form of Farm Loan Bonds*

Sec. 20.

* * *

In order to furnish farm loan bonds for delivery at the Federal land banks and joint stock land banks, the Secretary of the Treasury is hereby authorized to prepare suitable bonds in such form, subject to the provisions of this Act, as the Federal Farm Loan Board may approve, such bonds when prepared to be held in the Treasury subject to delivery upon order of the Federal Farm Loan Board. The engraved plates, dies, bed-pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury.

* * *

*Special Provisions of Farm Loan Bonds*

Sec. 21.

* * *

Every farm loan bond issued by a Federal land bank shall be signed by its president and attested by its secretary, and shall contain in the face thereof a certificate signed by the Farm Loan Commissioner to the effect that it is issued under the authority of the Federal Farm Loan Act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects;

that it is not taxable by National, State, municipal, or local authority; that it is issued against collateral security of United States Government bonds, or indorsed first mortgages on farm lands, at least equal in amount to the bonds issued; and that all Federal land banks are liable for the payment of each bond.

Sec. 22. * * *

Amortization and other payments on the principal of first mortgages held by a farm loan registrar as collateral security for the issue of farm loan bonds shall constitute a trust fund in the hands of the Federal land bank or joint stock land bank receiving the same, and shall be applied or employed as follows:

In the case of a Federal land bank—

* * *

(b) To purchase at or below par farm loan bonds issued by said bank or by any other Federal land bank.

* * *

In the case of a joint stock land bank—

* * *

(b) To purchase at or below par farm loan bonds.

## PROVISIONS OF THE REVENUE ACT OF 1916.

C. 463, 39 Stat. 758, 776.

Sec. 4. The following income shall be exempt from the provisions of this title:

* * *

interest upon the obligations of a State or any political subdivision thereof or upon the obligations of the United States or its possessions or securities issued under the provisions of the Federal farm loan Act of July seventeenth, nineteen hundred and sixteen; * * *

Sec. 22. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this title, are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed.

## PROVISIONS OF THE REVENUE ACT OF 1918.

C. 18, 40 Stat. 1057.

Sec. 213. That for the purposes of this title * * * the term "gross income"—

(b) Does not include the following items, * * *

(4) Interest upon * * * (b) securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916; * * *

[Similar provisions were contained in Section 213 (b) (4) of the Revenue Act of 1921; the same section of the Revenue Act of 1924, and the same section of the Revenue Act of 1926.]

## PROVISIONS OF THE REVENUE ACT OF 1928.

C. 852, 45 Stat. 797.

Sec. 22. GROSS INCOME.

(a) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

(b) *Exclusions from gross income.*—The following items shall not be included in gross income and shall be exempt from taxation under this title:

* * *

(4) *Tax-free interest.*—Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) securities issued under the provisions of the Federal Farm Loan Act, or under the provisions of such Act as amended; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations or securities enumerated in clause (A), (B), or (C) shall, in the return required by this title, submit a statement showing the number and amount of such obligations and securities owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit), the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt to the taxpayer from income taxes;

* * *

## EXEMPTION STATUTES.

### Group One.

### Statutes Exempting Only the Bonds.

2% Consol Bonds, Act of March 14, 1900, c. 41, 31 Stat. 45, 48 § 11, authorizing issuance of 2% consol bonds provided that such bonds should

> " . . . be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority."

2% PANAMA CANAL TOLL BONDS, Act of June 28, 1902, c. 1302, 32 Stat. 481, 484, § 8, authorizing 2% Panama Canal toll bonds provided that:

> ". . . the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal or local authority: . . ."

---

3% PANAMA CANAL TOLL BONDS, Act of August 5, 1909, c. 6, 36 Stat. 11, 117, § 39, authorizing 3% Panama Canal toll bonds provided that:

> ". . . the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: . . ."

POSTAL SAVINGS BONDS, Act of June 25, 1910, c. 386, 36 Stat. 814, 817, § 10, providing for postal savings bonds stated that:

> ". . . the bonds herein authorized shall be exempt from all taxes or duties of the United States as well as from taxation in any form by or under state, municipal, or local authority: . . ."

It is to be noted that each of the above statutes refers only to the bonds; nevertheless all bonds issued thereunder stated on their face that the exemption covered *interest* as well. (See Treas. Dept. Cir. No. 300, 1903, App. E, p. 52, *et. seq.*)

**Group Two.**

**Statutes Expressly Exempting Interest as Well as Principal.**

Act of July 14, 1870, c. 256, 16 Stat. 272, § 1, provided:

> ". . . all of . . . said several classes of bonds *and the interest thereon* shall be exempt from the payment of

all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; . . ." (Italics added.)

---

Act of December 23, 1913, c. 6, 38 Stat. 251, 269, § 18, 12 U. S. C. § 447, provided for issuance of Treasury notes and bonds. It provided that the Treasury notes should:

". . . be exempt *as to principal and interest* from the payment of all taxes and duties of the United States except as provided by this Act, as well as from taxes in any form by or under State, municipal, or local authorities." (Italics added.)

The act further provided that the bonds should be subject to the same terms and conditions as the 3% United States bonds then outstanding, they being the 3% Panama Canal toll bonds.

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First Liberty Loan Act of April 24, 1917, c. 4, 40 Stat. 35, § 1, 31 U. S. C. § 746.

"The principal and *interest* thereof shall be payable in United States gold coin of the present standard of value and shall be exempt, both as to principal and *interest*, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority; but such bonds shall not bear the circulation privilege." (Italics added.)

---

Second Liberty Loan Act of September 24, 1917, c. 56, 40 Stat. 288, 291, § 7, 31 U. S. C. § 747.

". . . All such bonds and certificates shall be exempt, both as to principal and *interest* from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing

authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations. . . ." (Italics added)

---

THIRD LIBERTY LOAN ACT of April 4, 1918, c. 44, 40 Stat. 502, 31 U. S. C. § 747.

*N. B.* These bonds were issued under enactment by way of amendment of the Second Liberty Loan Act. Hence, the exemptions are identical with the latter.

---

FOURTH LIBERTY BOND ACT of July 9, 1918, c. 142, 40 Stat. 844, 845, § 3, 31 U. S. C. § 750.

*N. B.* These bonds were issued under enactment by way of amendment of the Second Liberty Loan Act. Hence, the exemptions are identical with the latter except the following:

"Sec. 3. That notwithstanding the provisions of the Second Liberty Bond Act, as amended by the Third Liberty Bond Act, or of the War Finance Corporation Act, bonds and certificates of indebtedness of the United States payable in any foreign money or foreign moneys, and bonds of the War Finance Corporation payable in any foreign money or foreign moneys exclusively or in the alternative, shall, if and to the extent expressed in such bonds at the time of their issue, with the approval of the Secretary of the Treasury, while beneficially owned by a nonresident alien individual, or by a foreign corporation, partnership, or association, not engaged in business in the United States, be exempt both as to principal and *interest* from any and all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the

United States, or by any local taxing authority." (Italics added.)

---

VICTORY LIBERTY LOAN ACT of March 3, 1919, c. 100, 40 Stat. 1309, 1310, § 1, 31 U. S. C. § 753 (b), amending § 18 (b) of the Second Liberty Loan Act, *supra*, to read as follows:

"(b). The notes herein authorized may be issued in any one or more of the following series as the Secretary of the Treasury may prescribe in connection with the issue thereof:

"(1) Exempt, both as to principal and *interest*, from all taxation (except estate or inheritance taxes) now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority;

"(2) Exempt, both as to principal and *interest*, from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations;

"(3) Exempt, both as to principal and *interest*, as provided in paragraph (2); and with an additional exemption from the taxes referred to in clause (b) of such paragraph, of the interest on an amount of such notes the principal of which does not exceed $30,000, owned by any individual, partnership, association, or corporation; or

"(4) Exempt, both as to principal and *interest*, from all taxation now or hereafter imposed by the United States, any State or any of the possessions of the United States, or

by any local taxing authority, except (a) estate or inheritance taxes, and (b) all income, excess-profits, and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations or corporations." (Italics added.)

**Group Three.**

**Statutes Exempting "Income" Derived from Capital and Surplus.**

FEDERAL RESERVE ACT of December 23, 1913, c. 6, 38 Stat. 251, 258, § 7, 12 U. S. C. § 531:

"Federal reserve banks, including the capital stock and surplus therein, *and the income derived therefrom* shall be exempt from Federal, State, and local taxation, except taxes upon real estate." (Italics added.)

BANKING ACT of 1935, creating the Federal Deposit Insurance Corporation, June 16, 1933, as amended by Banking Act of 1935, c. 614, 49 Stat. 684, 696, § 101 [§ 12B (l)(9)], 12 U. S. C. § 264 (l)(9), covering new banks organized by the Federal Deposit Insurance Corporation:

". . . Notwithstanding any other provision of law the new bank, its franchise, property, *and income* shall be exempt from all taxation now or hereafter imposed by the United States . . ." (Italics added.)

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THE BANKHEAD-JONES FARM TENANT ACT of July 22, 1937, c. 517, 50 Stat. 522, 528, Title IV, § 40(i), 7 U. S. C. § 1014(i) relating to the Farmers' Home Corporation:

"Sec. 40.(i) The Corporation, including its franchises, its capital, reserves, and surplus *and its income* and property shall, except as otherwise provided in section 50(a), be exempt from all taxation now or hereafter imposed by the United States or any State, Territory, District, dependency, or political subdivision." (Italics added.)

FEDERAL CREDIT UNION ACT (June 26, 1934, c. 750, 48 Stat. 1216, 1222, § 18, 12 U. S. C. § 1768) as amended by Act of December 6, 1937, c. 3, 51 Stat. 4, § 4:

"Sec. 18. The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, *and their income* shall be exempt from all taxation now or hereafter imposed by the United States . . ." (Italics added.)

AGRICULTURAL ADJUSTMENT ACT of 1938, establishing Federal Crop Insurance Corporation, Act of February 16, 1938, c. 30, 52 Stat. 31, 75, § 511 of Title V, 7 U. S. C. § 1511:

"Sec. 511. The Corporation, including its franchise, its capital, reserves, and surplus, *and its income* and property, shall be exempt from all taxation now or hereafter imposed by the United States or by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority." (Italics added.)

**Group Four.**

**Statutes Exempting "Income" Derived from Capital and Surplus; But Only "Interest" Derived from Bonds.**

WAR FINANCE CORPORATION ACT of April 5, 1918, c. 45, 40 Stat. 506, 511, § 16, 15 U. S. C. §§ 344, 345:

"Sec. 16. That any and all *bonds* issued by the Corporation shall be *exempt, both as to principal and interest,* from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, corporations, or associations. *The interest* on an amount of such bonds the principal of which does not

exceed in the aggregate $5,000, owned by any individual, partnership, corporation, or association, shall be exempt from the taxes referred to in clause (b). The *Corporation* including its franchise and the capital and reserve or surplus thereof, *and the income derived therefrom,* shall be exempt from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except that any real property of the Corporation shall be subject to State, county, or municipal taxes to the same extent, according to its value, as other real property is taxed." (Italics added.)

RECONSTRUCTION FINANCE CORPORATION ACT of January 22, 1932, c. 8, 47 Stat. 5, 9, § 10, 15 U. S. C. § 610:

"Any and all notes, debentures, bonds, or other such obligations issued by the corporation shall be exempt both as to principal *and interest* from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. *The corporation,* including its franchise, its capital, reserves, and surplus, *and its income* shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed." (Italics added.)

FEDERAL HOME LOAN BANK ACT of July 22, 1932, c. 522, 47 Stat. 725, 735, § 13, 12 U. S. C. § 1433:

"Any and all notes, debentures, bonds, or other such obligations issued by any bank shall be exempt both as to principal *and interest* from all taxation (except surtaxes,

estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency or possession thereof, or by any State, county, municipality, or local taxing authority. *The bank*, including its franchise, its capital, reserves, and surplus, its advances, *and its income* shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that in any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed." (Italics added.)

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HOME OWNERS' LOAN ACT of June 13, 1933, c. 64, 48 Stat. 128, 130, § 4(c), 12 U. S. C. § 1463(c):

". . . The bonds issued by the Corporation under this subsection shall be exempt, both as to principal *and interest*, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any District, Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The *Corporation*, including its franchise, its capital, reserves and surplus, and its loans *and income*, shall likewise be exempt from such taxation; . . ." (Italics added.)

---

UNITED STATES HOUSING ACT of September 1, 1937, c. 896, 50 Stat. 888, 890, 898, §§ 5(c), 20(b), 42 U. S. C. §§ 1405(c), 1420(b):

"Sec. 5. (c) *The Authority*, including but not limited to its franchise, capital, reserves, surplus, loans, *income*, assets, and property of any kind, shall be exempt from all taxation now or hereafter imposed by the United States or by any State, county, municipality, or local taxing au-

thority. *Obligations, including interest thereon,* issued by public housing agencies in connection with low-rent-housing or slum-clearance projects, and the *income derived by such agencies* from such projects, shall be exempt from all taxation now or hereafter imposed by the United States.

"Sec. 20. (b) Such obligations shall be exempt, both as to principal *and interest,* from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or by any State, county, municipality, or local taxing authority." (Italics added.)

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Act of June 27, 1934, c. 847, 48 Stat. 1246, 1257, § 402 (e), 12 U. S. C. § 1725 (e):

"All notes, bonds, debentures, or other such obligations issued by the Corporation shall be exempt, both as to principal *and interest,* from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, . . . *The Corporation,* including its franchise, capital, reserves, surplus, *and income,* shall be exempt from all taxation now or hereafter imposed by the United States, . . . " (Italics added.)

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FEDERAL DEPOSIT INSURANCE CORPORATION, Act of June 16, 1933, c. 89, 48 Stat. 162, 168, 177, § 8 [§ 12 B (p)], 12 U. S. C. § 264 (p):

"All notes, debentures, bonds, or other such obligations issued by the Corporation shall be exempt, both as to principal *and interest,* from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, . . . *The Corporation,* including its franchise, its capital, reserves, and surplus, *and its income,* shall be exempt from all taxation now or hereafter imposed by the United States, . . . " (Italics added.)

FARM CREDIT ACT of June 16, 1933, c. 98, 48 Stat. 257, 267, § 63, 12 U. S. C. § 1138 c:

"Sec. 63. The Central Bank for Cooperatives, and the Production Credit Corporations, Production Credit Associations, and Banks for Cooperatives, organized under this Act, and their obligations, shall be deemed to be instrumentalities of the United States, and as such, any and all notes, debentures, bonds, and other such obligations issued by such banks, associations, or corporations shall be exempt both as to principal *and interest* from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority. Such banks, associations, and corporations, their property, their franchises, capital, reserves, surplus, and other funds, *and their income,* shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such banks, associations, and corporations shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed." (Italics added.)

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NATIONAL MORTGAGE ASSOCIATIONS, established by Act of February 3, 1938, c. 13, 52 Stat. 8, 24, § 8, 12 U. S. C. § 1722:

"Sec. 8. Section 307 of such Act is amended to read as follows:

" 'Sec. 307. All notes, bonds, debentures, or other obligations issued by any national mortgage association shall be exempt, both as to principal *and interest,* from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. *Every*

*national mortgage association*, including its franchise, capital, reserves, surplus, mortgage loans, *income*, and stock, shall be exempt from taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. Nothing herein shall be construed to exempt the real property of such association from taxation by any State, county, municipality, or local taxing authority to the same extent according to its value as other real property is taxed.' " (Italics added.)

**Group Five.**

**Statutes Exempting "Income" Derived from Capital and Surplus and Also "Income" Derived from Bonds.**

FEDERAL FARM LOAN ACT of July 17, 1916, c. 245, 39 Stat. 360, 380, § 26, 12 U. S. C. § 931:

"That *every Federal land bank* and every national farm loan association, including the capital and reserve or surplus therein and *the income derived therefrom*, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, *and as such they and the income derived therefrom* shall be exempt from Federal, State, municipal, and local taxation." (Italics added.)

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FEDERAL INTERMEDIATE BANKS, established under Act of March 4, 1923, c. 252, Title II, 42 Stat. 1454, 1459, § 2, (amending the Farm Loan Act of 1916):

" 'Sec. 210. That the privileges of tax exemption accorded under Section 26 of this Act shall apply also to

each Federal Intermediate Credit Bank, including its capital, reserve, or surplus, *and the income derived therefrom*, and the debentures issued under this title shall be deemed and held to be instrumentalities of the Government *and shall enjoy the same tax exemptions as are accorded farm loan bonds in said section.*'" (Italics added.)

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FEDERAL FARM MORTGAGE CORPORATION ACT of January 31, 1934, c. 7, 48 Stat. 344, 347, § 12, as amended February 26, 1934, c. 33, 48 Stat. 360, 12 U. S. C. § 1020 f:

"(a) *The corporation*, including its franchise, its capital, reserves, and surplus, *and its income* shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

"(b) Mortgages executed to the Land Bank Commissioner and mortgages held by the Corporation, and the credit instruments secured thereby, and *bonds issued by the Corporation* under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they *and the income derived therefrom* shall be exempt from Federal, State, municipal, and local taxation (except surtaxes, estate, inheritance, and gift taxes)." (Italics added.)

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COMMODITY CREDIT CORPORATION, Act of March 8, 1938, c. 44, 52 Stat. 107, 108, § 5, 15 U. S. C. § 713a-5:

"SEC. 5. Bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation under the provisions of this Act shall be deemed and held to be in-

strumentalities of the Government of the United States, and as such they *and the income derived therefrom* shall be exempt from Federal, State, municipal, and local taxation (except surtaxes, estate, inheritance, and gift taxes). *The Commodity Credit Corporation,* including its franchise, its capital, reserves, and surplus, *and its income* shall be exempt from all taxation now or hereafter imposed by the United States . . . ." (Italics added.)

**Excerpts from Brief of Government in Merchants Loan and Trust Co. v. Smietanka, 255 U. S. 509.**

(The issue in this case was the taxability under the Income Tax Act of September 8, 1916, as amended October 3, 1917, of capital gain derived from stock acquired before March 1, 1913, and sold February 2, 1917. The Government sought to tax the difference between the value of the stock as of March 1, 1913, and its selling price, as income. The taxpayers resisted upon the ground that gain derived from capital assets through a conversion thereof is not income unless segregated from the capital and treated as income. The following excerpts are from the brief filed by the Government.)

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(From pp. 9-10)

"Apparently, however, Congress recognized that such gains [from sales of real and personal property under the acts here in question] *received* [italics theirs] in a given year would, in many cases, have been accruing during a period of years a part of which was before the adoption of the sixteenth amendment. Before the adoption of that amendment *income derived from property* [italics ours] could not be taxed except by apportionment. Congress accordingly took March 1, 1913, as a starting point, and has treated all subsequent gains in the value of property as it was on that date as taxable income received when converted into cash. Ordinarily when property is sold the difference between the cost and selling price measures the gains which have been accruing during the period of ownership and which *are received when a sale is made* [italics theirs]. Congress seems to have felt that it ought not, if it could, tax so much of these gains as consist of increase of value occurring prior to the adoption of the amendment. The gains *finally realized by a sale* [italics ours] were regarded as what had been *earned,* through a period of years, *by the capital originally invested* [italics ours]. The value of the

property on a given date would include the portion of the profits finally realized which had been earned prior to that date. Hence it was determined to treat as taxable income only the difference between the value of the property on March 1, 1913, and the selling price . . . ."

* * *

(From pp. 10-12)

In defining "income" the brief says:

"* * * *Indeed, whatever comes to one as the earnings of labor or capital is, as it is received, income,* [italics ours] and becomes capital as soon as it has been received. A man's capital, at a given time, is what he had originally plus the accumulated income which he has added to it. As said in *Eisner* v. *Macomber,* (252 U. S. 189, 206):

> "For the present purpose we require only a clear definition of the term 'income,' as used in common speech, in order to determine its meaning of the amendment.

"Every man who sells a piece of property considers that the difference between the selling price and what the property has cost him is what he has made or *what the capital invested has earned for him* [italics ours]. It is this common-sense meaning which this court has given to the word 'income.'

"The question then is, What, in common speech, is understood to be included in income? * * *

"It is, of course, conceded that nothing is now income which was not income before the adoption of the sixteenth amendment. The effect of that amendment was simply to make taxable, without apportionment, certain classes of income which were not before so taxable. *Income* [italics theirs] means now the same that it meant before the adoption of that amendment, the effect of which is to enable Congress to tax income of all kinds without resorting to the

cumbrous method of taxing it by apportionment among the States. *It is true that before this amendment such income as is now involved had been held not taxable without apportionment* [italics ours]. This, however, was not because it was not *income* [italics theirs,] but because, on account of the source from which it was derived, a tax upon it had been held to be a direct tax and, therefore, subject to apportionment. The sixteenth amendment abolished all distinctions between the methods of taxing income by providing that income derived from any source should be taxable without apportionment. Certainly nothing which had previously been income was converted into something else by this constitutional amendment.

* * *

(From pp. 13-14)

"* * * The present tax is not an excise tax levied on the privilege of doing business. * * * It is applied broadly to the incomes of all individuals derived from any source whatever. Whether there is a liability for the tax depends solely upon whether there has been an income, and, in no sense, upon the character of the business from which the income is derived, or upon the fact that the recipient has been engaged in any business whatever. It applies to whatever is received and is included in the meaning which, in common language, is understood to attach to the word income.

* * *

(From p. 14)

"Whether income is the thing to be taxed or merely the thing by which the tax is to be measured, it must mean the same thing. It follows that whatever was income under the act of 1909 is income under the income tax laws, and is within the power of Congress to tax without apportionment."

(Here follows definition from *Stratton's Independence* v. *Howbert, Eisner* v. *Macomber* and *Doyle* v. *Mitchell,* and the brief continues:)

* * *

(From pp. 16-17)

"There was thus laid down a plain and simple rule that cannot be misunderstood. Income is something separate and distinct from the principal or capital *which produces it* [italics ours]. It is a gain or increase *derived from capital* [italics ours] and which has assumed a form in which it may be dealt with separate and apart from capital. When property is sold at an advance over what it has cost, the proceeds of sale include both the capital and the income which has resulted. The amount of income is to be ascertained by withdrawing from the proceeds of sale the amount of capital which has been invested. *What remains is the income which has been produced by or derived from the capital. When both are reduced to cash the income is something separate and distinct* [italics ours]. It can be used or expended without, in any way, using or expending the cash which, after the sale, represents the capital. So long as we have a capital asset the market value of which has advanced, there is the possibility of realizing profit or income by a sale of the asset. But, until such a sale, the possibility of profit can not be used in any way without using, in the same way, the capital asset. Hence nothing which falls short of separating the income from the capital can be said to result in the receipt by the owner of the income, and the present law taxes income only when it is received. * * *"

## DRAFTS OF SECTION 26 DURING COURSE OF ITS ENACTMENT.

The first draft of the bill made by the United States Commission is as follows (Senate Committee Hearings, Committee on Banking and Currency, 1913-15, Vol. 35, p. 832):

> "The collateral trust bonds or debentures issued by any national farm-land bank organized under this act shall be forever exempt from the imposition of any tax, assessment or charge (other than income tax), whether national, State or municipal: *Provided*, That under the laws of the State under which said bank is operating, the mortgages or deeds of trust (or bonds or obligations secured thereunder) deposited as security for these collateral trust bonds or debentures of the said bank are likewise exempt under the laws of the said State from all taxes (other than income tax), assessment, or charges imposed by the said State or by any subdivision thereof or municipality thereunder; but no collateral trust bonds or debentures issued by a national farm-land bank shall have the privilege of such exemption from taxation under this act unless and until the mortgages and deeds of trust (or notes or obligations secured thereunder) which are deposited to secure the said collateral trust bonds or debentures of the said bank are likewise exempted from taxation by the State in which the bank is operating, as herein provided."

On more mature study this was broadened by the Commission so as to read as follows:

> "Sec. 18. That every national farm-land bank incorporated under the terms of this act and the capital stock and surplus therein and the *income derived therefrom* and the mortgages and deeds of trust (and the *notes and bonds* secured thereby) held by said bank and the national land-bank bonds issued by the same shall be exempt from Federal, State, and local taxation, except in respect to taxes upon real estate." (Italics added) (Report, U. S. Com., Senate Doc. No. 380, 63rd Congress, 2d Session, Parts I and II, page 62.)

After the United States Commission submitted its report to Congress there was considerable criticism of the tax exemption feature of the proposed bill. The criticism was to the effect that it would be more justifiable to exempt from taxation the income from the farm loan bonds than the income from the capital of the joint stock land banks. (Hearings of Sub-committee, supra, pp. 97, 263-4, 831-2.)

The result was that when the bills from which the Farm Loan Act finally evolved were introduced in the Senate and the House they both contained the following provision: (S. 2986; H. R. 15004; H. R. Report No. 630, 64 Cong., 1st Sess.)

> "Sec. 23. [House Bill; in the Senate this provision was Sec. 29.] That every Federal Land Bank and every national farm-loan association, including the capital stock and reserve or surplus therein and the *income derived therefrom*, shall be exempt from Federal, State, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this act. First mortgages executed to Federal land banks, or to joint-stock land banks, under the provisions of this act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, and local taxation.
>
> "Farm loan bonds issued under the provisions of this act and the *income derived therefrom* shall be exempt from Federal, State, and local taxation." (Italics added)

After extended hearings before a joint sub-committee created by both Houses of Congress, the Committee on Banking and Currency of each House reported the bill to their respective Houses. The House Committee did not change the language of the above provision but the Senate Committee changed it so as to provide as follows:

> "Sec. 29. That every Federal land bank and every national farm loan association, including the capital stock and reserve or surplus therein and the *income*

> *derived therefrom,* shall be exempt from Federal, State, municipal and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and *the income derived therefrom* shall be exempt from Federal, State, municipal and local taxation." (Italics added) (Senate Report No. 144, 64th Cong. 1st Session, p. 32.)

The Senate Bill, including the above Section 29, (now Section 26) was the one finally enacted (S. 2986, 64th Cong. 1st Session; 12 U. S. C. § 931).

## STATEMENTS BEFORE HEARINGS AND ON FLOOR OF CONGRESS DURING PASSAGE OF FARM LOAN ACT.

Proponents and opponents of the Farm Loan Act were unanimous in their interpretation as to the complete nature of the exemption. They disagreed only as to the wisdom thereof.

Senator Lodge of Massachusetts had this to say:

(Cong. Record, Vol. 53, p. 7128)

> "*Total tax exemption* is to be accorded to the bonds and mortgages of both Federal land banks and joint-stock land banks and in every other respect to the Federal land banks and national farm loan associations."

He contended that this would put other institutions and associations at a disadvantage.

Senator Cummins of Iowa opposed the tax exemption section in the following language (Cong. Record, Vol. 53, p. 7311):

"... But what is proposed here is that a capitalist of New York City who wants to buy a million dollars of the farm-loan bonds—because with the exemption from taxation we are providing they will be altogether the most attractive investment ever presented to the American people—*is not taxed at all;* and under any defensible system of taxation, if the City National Bank, of New York, or Kuhn, Loeb & Co. or any other of the great financial institutions desire to invest their capital in this very fascinating and profitable form, ought they not to pay taxes on their wealth? They would not have to return it, *even in their income accounts.*"

T. C. Atkeson, one of the agricultural experts who appeared before the joint sub-committee also protested against this exemption: (Joint Hearings before Sub-Committee of Committee on Banking and Currency of Senate and House, on Rural Credits, pp. 263-4.)

"The tax exemption includes the *profits* of these banks and the *profits* of individuals who make their investments solely for profit and who have no regard for the great national policy of conservation of agriculture and the perpetuation of our food supply.

"These exemptions are totally without the warrant of a great national beneficence. The nation might be justified in making these exceptions for the good of the people, but to make them for the benefit of the few bankers is special legislation of the rankest type."

He opposed the provisions because "so far as they provide for the special privilege of exemption from taxation it is a special legislation for private profits" (Ibid. pp. 263-264).

Senator Harding introduced into the Record letters written by former Governor Myron T. Herrick of Ohio, himself an authority on rural credits. In one of these letters, Governor Herrick says (Cong. Record, Vol. 53, p. 6850):

> "*The tax exemptions to be accorded are unparalleled.* . . . There is no foretelling the amount that might be attracted by this total tax exemption and the promise of Federal functionaries to pay high interest rates."

The proponents of the measure had the same understanding.

Typical is the language used by Senator Hollis in a direct reply to the contentions set forth by Governor Herrick (Cong. Record, Vol. 53, p. 6851) (Senator Hollis was in charge of the bill in the Senate.):

> "Governor Herrick speaks of 'jokers,' and points out two provisions that he calls 'jokers.' The first one that he calls a 'joker' is tax exemption. There is no joke about that. It is put right in the bill flatly; attention has been called to it in the report of the committee; I have called attention to it on the floor of the Senate; and there is no 'joker' about it . . . ."

Again, Senator Hollis said (p. 6696-7):

> ". . . and the government exempts from the income-tax law and from all Federal, State and local taxes, the capital stock of the Federal land banks—not of the joint stock land banks—and the mortgages and the bonds . . .
>
> "MR. LA FOLLETTE. Will the Senator state whether the bonds issued by the joint-stock banks are exempt from taxation as the bonds of the cooperative banks are?
>
> "MR. HOLLIS. Yes, the mortgages and the bonds are exempt in each instance . . ."

Representative Moss who was in charge of the bill in the House, had this to say:

> "I should oppose exempting the income of the banks from taxation. I believe in an income tax, and I think it would certainly be a very dangerous

precedent, after having just exacted an income-tax law, for Congress to create a corporation and exempt it from the income tax . . .

"But while I feel that the net income of the bank ought to be taxed under the income tax law, you understand that I am just as strongly in favor of exempting the bonds and the mortgages securing them from taxation."

(Hearings before aforesaid Joint Sub-Committee, p. 95.)

## EXCERPTS FROM REPORTS DISCLOSING PURPOSE BACK OF FARM LOAN ACT.

Excerpt from Senate Document 380, 63d Congress, 2d Session, parts I and II, p. 24:

"Agriculture has been the one great national industry which has been without organization and has been absolutely helpless before the wonderful growth of our Nation. Therefore, the financing of our farms has become a national problem. The savings of the Nation must flow out to the farms in order to put agriculture on a proper basis as compared with other organized industries."

Excerpt from House Rep. No. 630, 64th Cong., 1st Sess., p. 3:

"Present Agencies Unable to Furnish Adequate Credit.

"That proper credit facilities are denied the farmer under present conditions is too apparent to need demonstration. Under present conditions the farmer often finds it difficult to obtain land-mortgage loans; such loans, when granted, carry a high rate of interest, in some sections a uniformly burdensome rate and in many instances an extortionate interest rate. Universally only short-time mortgages are available.

"That unreasonable rates and terms are imposed or oppression and extortion practiced it is needless to consider here. The potent fact is that the farmer, except in the few more fortunate sections, has not the service

nor the accommodation in mortgage credit to which his security entitles him, and, furthermore, under existing conditions he can not get it."

Excerpt from Sen. Rep. No. 144, 64th Congress, 1st Session, pp. 1-2:

"Modern Farming Requires Capital in Large Amounts—the American Farmer has the Best Security in the World, Productive Land—This Bill Enables the Farmer to Obtain Capital for Productive Purposes, at Low Rates and for Long Terms, on the Security of his Farm.

"Necessity for Farm Capital.

"The successful farmer becomes more of a business man each year. He must use more machinery, buy more fertilizer, and sow better seed. He must erect better buildings, raise better stock, and grow better crops. He must store his produce in order to sell in a high market. He must pay cash in order to buy cheap. If he wishes to keep his children on the farm, he must make his home attractive. All of this costs money. He must have ready cash.

"Difficulty of Securing Capital.

"The farmer applies to the nearest bank for a loan and offers his farm as security. The banker makes excuses. He doesn't know the farmer; he doesn't know the value of his farm; he doesn't like to tie his demand deposits up in long-term loans; his commercial customers, who carry a substantial line of deposits, have the first claim. These excuses are well founded.

"There may be additional excuses not so genuine, such as the scarcity of money, the hard hearts of the directors, unusual demands for loans, and the like. If the farmer gets a loan at all, he pays a high rate or he must be subject to foreclosure on short notice. He usually pays some one a large commission; he is subject frequently to substantial renewal fees; he is sometimes compelled to pay taxes on the mortgage as well as on the land; and he finds himself in the power of some hard-headed banker. He can not complain of this; it is the business of the banker to be hard-headed."

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